

**The Marmon Group, Inc., a Division of Long Airdox Company and Oil, Chemical and Atomic Workers Union, AFL-CIO, Petitioner. Case 5-RC-11800**

28 February 1984

# DECISION AND ORDER DIRECTING HEARING

BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS

The National Labor Relations Board, by a three-member panel, has considered objections to an election held on 22 July 1982 and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 63 for and 48 against the Petitioner, with 4 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief and hereby overrules the Regional Director's findings and recommendations, and remands the case to him for a hearing on the Employer's objections.

In its objections, the Employer alleges, in substance, that the Petitioner's organizers made threats of physical harm and property damage against various employees. In support of these objections, the Employer submitted copies of unsworn, but signed statements of four employees. The first employee stated that two of the individuals who were alleged as the Petitioner's organizers in the objections asked him, while he was sitting in his car with his wife, whether he was "for the union." When the employee responded, "you don't know," one of the individuals stated, "you have some mighty nice tires there you wouldn't [sic] want them cut," and "you wouldn't like someone to come by and bomb your house would you." A second employee asserted in his statement that another named individual, alleged in the objections as one of the Petitioner's organizers, told him that "they were going to stomp him and get his car if he vote [sic] no for the union," and that "we know were [sic] you live we don't have to get you here, we'll get you down there." This employee further stated that while he was standing in line to vote and this same individual was leaving the voting area, the latter "slammed [sic] me into the wall on his way back." A third employee asserted in his statement that while at work one of the above individuals alleged to be an organizer for the Petitioner and two other unidentified men told him that "when the union gets in and we go on strike anyone that went to work they would stomp their ass and not at work

they would go to their homes." The fourth employee asserted in his statement that, "We were sitting around lunch room [sic] and some one [sic] made the statement when the union gets in no one will cross the picket lines. James said he was going to work no matter what. Bob Frost said while your car can burn too [sic]."<sup>1</sup>

The Regional Director found that the above-alleged threats were not shown to have been made by agents of the Petitioner and noted that the names of the three individuals who allegedly made such threats were listed as eligible voters on the *Excelsior* list. He further found no evidence that the alleged threats were made with the knowledge or condonation of the Petitioner. The Regional Director therefore assessed the various threats as third-party conduct, and concluded that they were insufficient to create a general atmosphere of fear and reprisal. Accordingly, he recommended that the Employer's objections be overruled.<sup>2</sup>

Contrary to the Regional Director, we find that the evidence revealed during the investigation is sufficient to warrant a hearing on the Employer's objections. Thus, the Employer has presented witnesses who have testified to various alleged threats of serious violence, including threats of bodily harm, of house bombing, and of property damage, and to an incident in which an employee waiting in line to vote was slammed into a wall by an employee who previously had threatened him with bodily harm. This serious and aggravated conduct, if proven, might indeed have created a general atmosphere of fear and reprisal rendering a free choice in the election impossible.

In our view, the evidence presented in this case raises substantial and material issues warranting a hearing on whether the alleged conduct occurred, the context in which it occurred, and its possible impact on the election.<sup>3</sup> Accordingly, we shall order a hearing on the Employer's objections.

## ORDER

It is hereby ordered that a hearing be held before a duly designated hearing officer for the purpose of receiving evidence to resolve the issues raised with respect to the Employer's Objections 1 through 5.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting the hear-

<sup>1</sup> "James" was not further identified, and Frost was not alleged in the objections as one of the Petitioner's organizers.

<sup>2</sup> Member Hunter notes that the Regional Director relied, *inter alia*, on *Seville*, 262 NLRB 1282 (1982), in which then Chairman Van de Water and Member Hunter dissented from the Board majority's refusal to order a hearing on the objections.

<sup>3</sup> Member Hunter further notes that a hearing might reveal in greater detail than did the investigation the relationship, if any, between the Petitioner and the employees who allegedly engaged in the conduct here.

ing shall prepare, issue, and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the objections. Within 10 days from the date of issuance of the report, either party may file with the Board in Washington, D.C., an original and seven copies of exceptions to the report. Immediately upon the filing of exceptions, the party filing them shall serve a copy on the other party, and shall file a

copy with the Regional Director. If no exceptions are filed thereto, the Board will adopt the recommendations of the hearing officer.

IT IS FURTHER ORDERED that the above-entitled matter be, and it hereby is, referred to the Regional Director for Region 5 for the purpose of arranging a hearing and that the Regional Director be, and he hereby is, authorized to issue notice of the hearing.